

IN THE
Supreme Court of the United States
October Term, 1977

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

No. 77-1583

**AMERICAN SOCIETY OF COMPOSERS, AUTHORS
AND PUBLISHERS, et al.,**
Petitioners,
v.

COLUMBIA BROADCASTING SYSTEM, INC.,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

SUPPLEMENTAL BRIEF

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We submit this supplemental brief under Rule 24(5) to bring to the Court's attention a new development which, we submit, lends further support to our petition for a writ of certiorari.

One of the points we made in our petition is that review of the decision below is necessary now to avoid turmoil in the music licensing industry and a heavy burden on the federal courts which will result if the Second Circuit's decision is allowed to stand. We stated at page 19:

"Under the Second Circuit's ruling here, however, a plethora of litigation seems inevitable. Even though

the Second Circuit decision is directed only to television networks, every user of ASCAP music will be encouraged to assert—in a plenary anti-trust action whenever and wherever he chooses—that the federal court he chooses must devise a ‘per use’ license for him and that he need pay nothing for what he has freely used.

“This is no exercise in speculation. Such claims have already been asserted by local television and radio stations asserting their entitlement to special licenses because the ASCAP blanket license violates the anti-trust laws.”

When we wrote the above passage, we referred to a few local television and radio stations which had asserted such claims. Now, however, our prophecy has become fact: the entire local television industry has threatened an anti-trust action based on the decision below. On September 13, 1978, ASCAP received a letter from the All-Industry Television Music License Committee representing some 600 of the nation’s 700 local television stations. That letter, a copy of which is annexed hereto, states in part:

“The ruling of the court in the *CBS* case, affirming the holding of many other courts that the existing blanket license is *per se* illegal, in our judgment conclusively compels exploration of alternative license forms.

• • •

“You should appreciate the fact that, in light of these precedents, stations are seriously considering pursuit of antitrust litigation seeking injunctive relief; prior to the commencement of any such litigation, however, we would be willing to pursue discussions of new license forms.”

Thus, unless the decision of the Second Circuit is now reviewed by this Court, the industry-wide litigation threatened by the local stations is likely to be instituted, and another District Court will have to consider and apply the novel rule of price-fixing announced by the Court of Appeals in the decision below. The turmoil we predicted will have grown to embrace the largest single source of income for composers, the entire television industry.

September 21, 1978

Respectfully submitted,

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September 13, 1978

American Society of Composers,
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Gentlemen:

The All Industry Television Music License Committee hereby requests, without waiving rights on the part of any station, a further extension of the existing licenses between ASCAP and the local television stations which the Committee represents to and including November 30, 1978, subject to retroactive adjustment as of January 1, 1978.

The ruling of the court in the *CBS* case, affirming the holding of many other courts that the existing blanket license is *per se* illegal, in our judgment conclusively compels exploration of alternative license forms. Similarly, we view the *Alden-Rochelle v. ASCAP* precedent as controlling authority for the stations' entitlement to a license from ASCAP which excludes from its coverage non-network pre-recorded programming.

You should appreciate the fact that, in light of these precedents, stations are seriously considering pursuit of antitrust litigation seeking injunctive relief; prior to the commencement of any such litigation, however, we would be willing to pursue discussions of new license forms. In light of the precedents, we would expect ASCAP to be willing to entertain such discussions.

We look forward to your prompt response.

Sincerely,

/s/ LESLIE G. ARRIES, JR.

LESLIE G. ARRIES, JR.
Chairman

LGA:lw